

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

BayOne Urethane Systems, L.L.C.
2700 Papin Street
St. Louis, Missouri 63103

Respondent

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Docket No. CAA-07-2004-0211

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII ("EPA") and BayOne Urethane Systems, L.L.C. ("Respondent") have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated provisions of the Act governing control of emissions from

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consumer or commercial products. The Respondent's failure to comply with reporting and labeling requirements for the manufacture and distribution of architectural coatings constitutes a violation of Section 183(e) of the Act, 42 U.S.C. § 7511b(e), and the applicable regulations. Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator of EPA Region VII, is the Director of the Air, RCRA, and Toxics Division at EPA Region VII.

4. The Respondent is BayOne Urethane Systems, L.L.C., 2700 Papin Street, St. Louis, Missouri 63103. Respondent is a joint venture of Bayer Polymers and PolyOne Corporation.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The 1990 Clean Air Act Amendments include Section 183(e) of the Act, which regulates the content of volatile organic compounds ("VOCs") in paints and other consumer and commercial products (including architectural coatings) in order to reduce VOC emissions that cause or contribute to ground-level ozone in quantities that violate the national ambient air quality standards.

6. Pursuant to the authority granted under Section 183(e) of the Act, 42 U.S.C. § 7511b(e), the Administrator promulgated regulations providing for the reduction of VOC

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emissions from architectural coatings. The regulations are codified at 40 C.F.R. Part 59.400 et seq.

7. Pursuant to 40 CFR § 59.401, a "manufacturer" is defined as a person who produces, packages, or repackages architectural coatings for sale or distribution in the United States. And a "person" is defined as an individual, corporation, partnership, or association.

8. Pursuant to 40 C.F.R. § 59.408(b), manufacturers of architectural coatings must file an initial report with the EPA so that the EPA is on notice of the manufacturing activity.

9. Pursuant to 40 C.F.R. § 59.405(a)(2), manufacturers of architectural coatings must include on the label or the lid of each container sold or distributed, a statement of the manufacturer's recommendation regarding thinning of the coating.

10. Pursuant to 40 CFR § 59.405(a)(3), manufacturers of architectural coatings must include the VOC content of the coating on the label or the lid of each container sold or distributed.

11. Section 183(e)(6) of the Act, 42 U.S.C. § 7511b(e)(6), provides that any regulation established under section 183(e) shall be treated, for enforcement purposes, as a standard under Section 7411 of the Act, and that any violation of such regulation shall be treated as a violation of a requirement of section 7411(e), which prohibits operation of a new source in violation of any standard of performance.

Violations

12. EPA hereby states and alleges that Respondent violated the Clean Air Act and federal

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regulations promulgated pursuant to the Act as follows:

General Allegations

13. Respondent is subject to 40 CFR § 59.400 et seq. because it is a “manufacturer” of architectural coatings.

14. Respondent is, and was at all times referred to herein, a “person” as defined by 40 CFR § 59.400.

15. Respondent commenced manufacturing architectural coatings on June 1, 2003.

16. On or about December 12, 2003, EPA sent Respondent a request for information pursuant to Section 114 of the Act, 42 U.S.C. § 7414. Respondent responded to EPA’s request for information on or about February 6, 2004.

Count I

17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

18. Respondent failed to submit an initial report to the EPA within 180 days after it first manufactured an architectural coating.

19. Respondent’s failure to submit an initial report within 180 days after first manufacturing an architectural coating is a violation of 40 CFR § 59.408(b) and Sections 183(e) and 111(e) of the Act.

Count II

20. Paragraphs 1 through 16 are realleged and incorporated herein by reference.
21. Respondent failed to include on the label or the lid of each container that it sold or distributed, a statement of Respondent's recommendation regarding thinning of the coating.
22. Respondent's failure to properly label the containers it sold or distributed was a violation of 40 CFR §59.405(a)(2) and Sections 183(e) and 111(e) of the Act.

Count III

23. Paragraphs 1 through 16 are realleged and incorporated herein by reference.
24. Respondent failed to include the VOC content of the coating on the label or the lid of each container that it sold or distributed.
25. Respondent's failure to include the VOC content of the coating on the label or the lid of each container that it sold or distributed was a violation of 40 CFR §59.405(a)(3) and Sections 183(e) and 111(e) of the Act.

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.
2. Respondent neither admits nor denies the specific factual allegations set forth above.
3. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

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4. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

5. Respondent certifies, by the signing of this Consent Agreement and Final Order, that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR § 59.400 et seq.

6. Nothing in the Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

7. Without admitting any violation of law, Respondent consents to the issuance of this Consent Agreement and Final Order and consents, for the purposes of settlement, to the payment of the civil penalty as set forth below. This Consent Agreement and Final Order shall resolve all violations of the Act alleged herein.

8. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

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Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

9. Respondent shall pay a civil penalty of Three Thousand Five Hundred Dollars (\$3,500), within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
Post Office Box 360748M
Pittsburgh, Pennsylvania 15251.

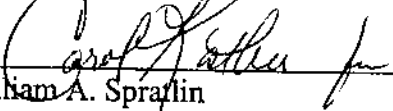
10. A copy of the check should be sent to:

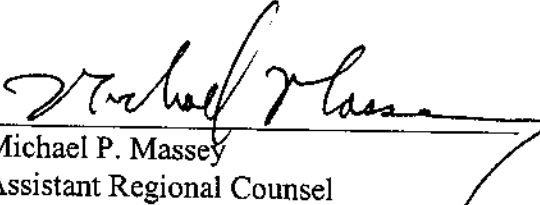
Michael P. Massey
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

11. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

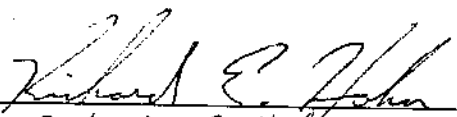
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COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Date: 5/24/04 By: 
William A. Spratlin
Director
Air, RCRA, and Toxics Divisions

Date: 5/24/04 By: 
Michael P. Massey
Assistant Regional Counsel

RESPONDENT:
BAYONE URETHANE SYSTEMS, L.L.C.

Date: May 20, 2004 By: 
Richard F. Hahn

Title: Senior Counsel

*In the Matter of
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FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately. IT IS SO ORDERED.

Date: May 26, 2004

By: Karina Borromeo

Karina ~~de~~ Borromeo
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Michael P. Massey
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Richard E. Hahn, Esq.
c/o PolyOne Corporation
33587 Walker
Avon Lakes, Ohio 44012

Dated: 5/26/4

Debby White for
Kathy Robinson
Regional Hearing Clerk

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only: No Insurance Coverage Provided)	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To: Richard E. Hahn, Esq. Docket No. CAA-07-2004-0211	
Street, Ap or PO Box c/o PolyOne Corporation	
City, State 33587 Walker	
Avon Lakes, Ohio 44012	
PS Form 3800, January 2004 See Reverse for Instructions	

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